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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/723,944	11/26/2003	Kenneth Whitham	2003P11790US	9420

7590 06/07/2005

Siemens Corporation  
Attn: Elsa Keller, Legal Administrator  
Intellectual Property Department  
170 Wood Avenue South  
Iselin, NJ 08830

EXAMINER
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DINH, TRINH VO

ART UNIT	PAPER NUMBER
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2821

DATE MAILED: 06/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/723,944

Applicant(s)

WHITHAM ET AL.

Examiner

Trinh Vo Dinh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 6, 7, 9, 10, 15, 16, 18, 19, 24 and 25 is/are rejected.
- 7) ☒ Claim(s) 2-5, 8, 11-14, 17, 20-23, 26 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

Applicant's communication filed on 04/06/2005 has been carefully considered by the examiner. The arguments advanced therein are persuasive with respect to the rejections of record, and those rejections are accordingly withdrawn. In view of a further search, however, a new rejection is set forth below. This action is not made final.

#### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 6-7 drawn to the apparatus and method claims 9-10, 15-16, 18-19 and 24-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Young (US 5,821,694).

With respect to claim 1, Young discloses an accelerator waveguide (10) comprising an end cavity (22), the accelerator waveguide to output first particles from the end cavity at a first energy in a first mode and to output second particles from the end cavity at a second energy in a second mode (col. 1, lines 5-20), and a detuning device (col. 4, lines 36-45, or lines 62-67 or col. 5, lines 12-22 inherently discloses a detuning device) coupled to the end cavity (22).

With respect to claim 6, Whitman discloses an RF power source (col. 3, lines 40-55) to transmit a first wave having a first power to the accelerator waveguide in the first mode, and to transmit a second wave having a second power to the accelerator waveguide in the second mode.

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With respect to claim 7, Whitman discloses a particle source (col. 3, lines 40-45, or Figs. 1-2) to inject particles at a first current into the accelerator waveguide in the first mode, and to inject particles at a second current into the accelerator waveguide in the second mode.

With respect to claims 9-10, 15-16, 18-19 and 24-25, the apparatus discussed above would perform the same method.

### ***Allowable Subject Matter***

3. Claims 2-5, 8, 11-14, 17, 20-23, 26 would be allowable if rewritten to include all of the limitations of the base claim and any intervening claims and /or written to overcome the objections set forth in the office action.

4. The following is a statement of reasons for the indication of allowable subject matter:

The cited art of record fails to teach the detuning device comprising a probe movable between a first position in the first mode and a second position in the second mode as defined in claims 2, 11, 20, or an electrical circuit including an electrical conductor, a portion of the electrical conductor disposed within the end cavity as defined in claim 3, 12 and 21.

### ***Inquiry***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Trinh Vo Dinh whose telephone number is (571) 272-1821. The examiner can normally be reached on Monday to Friday from 9:30AM to 6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Don Wong, can be reached on (571) 272-1834. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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A handwritten signature in black ink, appearing to read 'Trinh Vo Dinh', followed by a long horizontal line.

*Trinh Vo Dinh*  
*June 02, 2005*